

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## HOWARD S. BENNETT.

CASE NO. C24-0272JLR

Petitioner,

## ORDER ADOPTING REPORT AND RECOMMENDATION

JASON BENNETT,

## Respondent.

## I. INTRODUCTION

Before the court is Magistrate Judge Michelle L. Peterson's report and recommendation, in which she recommends that the court dismiss *pro se* Petitioner Howard S. Bennett's 28 U.S.C. § 2241 petition for a writ of habeas corpus as untimely. (R&R (Dkt. # 8); *see* Petition (Dkt. # 5).) Mr. Bennett<sup>1</sup> filed timely objections on May 8, 2024. (Obj. (Dkt. # 9).) The court has considered the report and recommendation, Mr.

<sup>1</sup> The petition has not been served on Respondent Jason Bennett. (See generally Dkt.) Thus, the court refers to Petitioner Howard S. Bennett as “Mr. Bennett” throughout this order.

1 Bennett's objections, the relevant portions of the record, and the governing law. Being  
2 fully advised, the court ADOPTS Magistrate Judge Peterson's report and  
3 recommendation and DISMISSES Mr. Bennett's habeas petition with prejudice.

4 **II. BACKGROUND**

5 Mr. Bennett is a state prisoner who is currently confined at the Stafford Creek  
6 Corrections Center in Aberdeen, Washington, pursuant to a state-court judgment and  
7 sentence issued in February 1998. (See Petition at 1.) Mr. Bennett argues that his  
8 confinement is illegal because the Pierce County District Court did not issue a valid arrest  
9 warrant in his criminal case. (See generally Memorandum (Dkt. # 5-2); Bennett Aff.  
10 (Dkt. # 5-1) (describing his efforts to obtain a copy of his arrest warrant).)

11 On February 28, 2024, Mr. Bennett filed a motion for leave to proceed *in forma*  
12 *pauperis* ("IFP") and a proposed § 2241 petition in this court. (IFP Mot. (Dkt. # 1).) He  
13 filed a corrected IFP motion on March 7, 2024. (2d IFP Mot. (Dkt. # 3).) On March 15,  
14 2024, Magistrate Judge Peterson (1) granted Mr. Bennett's corrected IFP motion;  
15 (2) filed Mr. Bennett's petition on the docket; and (3) issued an order construing Mr.  
16 Bennett's petition as filed pursuant to 28 U.S.C. § 2254 and directing Mr. Bennett to  
17 show cause, by no later than April 15, 2024, why the petition should not be dismissed as  
18 time-barred. (IFP Ord. (Dkt. # 4); Petition; OSC (Dkt. # 7).) Magistrate Judge Peterson  
19 determined that the statute of limitations for Mr. Bennett to file a § 2254 petition relating  
20 to his 1998 conviction and sentence expired in December 2001—more than 22 years  
21 before Mr. Bennett filed his petition in this case. (OSC at 2-3.)

22

1 Mr. Bennett did not respond the order to show cause. (See generally Dkt.)

2 Accordingly, on May 2, 2024, Magistrate Judge Peterson filed a report and  
3 recommendation in which she recommends dismissing the petition as time-barred. (See  
4 generally R&R.) Mr. Bennett filed timely objections on May 8, 2024. (See generally  
5 Obj.)

6 **III. ANALYSIS**

7 A district court has jurisdiction to review a magistrate judge's report and  
8 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court  
9 may accept, reject, or modify, in whole or in part, the findings or recommendations made  
10 by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "The statute makes it clear that the  
11 district judge must review the magistrate judge's findings and recommendations *de novo*  
12 *if objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114,  
13 1121 (9th Cir. 2003) (en banc). Because Mr. Bennett is proceeding *pro se*, the court must  
14 interpret his petition and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339  
15 F.3d 920, 925 (9th Cir. 2003).

16 Magistrate Judge Peterson recommends that the court construe Mr. Bennett's  
17 purported § 2241 habeas petition as a § 2254 habeas petition because Mr. Bennett is in  
18 custody pursuant to a state court judgment. (R&R at 1 (citing *White v. Lambert*, 370 F.3d  
19 1002, 1009-10 (9th Cir. 2004)).) She then recommends dismissing the petition as  
20 time-barred because Mr. Bennett filed it "many years" after the § 2254 statute of  
21 limitations expired, failed to respond to the order to show cause, and "made no effort to  
22 demonstrate that [his] petition qualifies for any exception to the federal statute of

1 limitations.” (R&R at 2.) Mr. Bennett objects to the report and recommendation on five  
2 grounds. The court considers each objection below.

3 First, Mr. Bennett objects that “[t]he Report and Recommendation procedurally  
4 recharacterizes the petition” from § 2241 to § 2254. (Obj. at 1.) Although he does not  
5 explain in his objections why he believes that Magistrate Judge Peterson erred in doing so  
6 (*see generally id.*), he does argue in support of his habeas petition that “his confinement  
7 is NOT the result of a criminal court[’]s judgment” because his arrest was not the result  
8 of a valid arrest warrant (*see generally* Memorandum). On de novo review, the court  
9 agrees with and adopts Magistrate Judge Peterson’s decision to construe the petition as  
10 filed under § 2254. Although Mr. Bennett asserts that the state court judgment was  
11 improper, he is nevertheless “a state prisoner in custody pursuant to a state court  
12 judgment” and thus any challenge to that judgment must be brought pursuant to § 2254.  
13 *Dominguez v. Kernan*, 906 F.3d 1127, 1135 (9th Cir. 2018) (explaining that § 2254 is  
14 “the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a  
15 state court judgment,” while § 2241 is “available for challenges by a state prisoner who is  
16 not in custody pursuant to a state court judgment” (citations omitted)). Therefore, the  
17 court OVERRULES Mr. Bennett’s first objection.

18 Second, Mr. Bennett objects that “[t]he Report and Recommendation failed to  
19 address Petitioner[’]s Affidavit in Support of” his § 2241 Petition. (Obj. at 1.) This court  
20 has reviewed the affidavit, in which Mr. Bennett discusses his efforts to obtain a copy of  
21 his arrest warrant. (*See generally* Bennett Aff.) The court finds nothing in the affidavit  
22

1 to support a finding that Mr. Bennett's petition was timely. Therefore, the court  
2 OVERRULES this objection.

3 Third, Mr. Bennett objects that “[t]he Report and Recommendation failed to take  
4 judicial notice pursuant to the mandatory provision of [Federal Rule of Evidence 201(d)]  
5 nor was Petitioner allowed to be heard pursuant to [Federal Rule of Evidence 201(e)].”  
6 (Obj. at 2; *see generally* Judicial Notice Mot. (Dkt. # 6).) The court has reviewed Mr.  
7 Bennett's motion for judicial notice and finds nothing in the attached documents that  
8 would alter the conclusion that Mr. Bennett's petition was untimely. Therefore, the court  
9 OVERRULES this objection.

10 Fourth, Mr. Bennett objects that “[t]he Report and Recommendation failed to  
11 order the respondent to produce a certified copy of the Arrest Warrant, which is  
12 necessary for claim adjudication.” (Obj. at 2 (citing *Brady v. Maryland*, 373 U.S. 83  
13 (1963)).) Because the court must dismiss Mr. Bennett's petition as untimely, it cannot  
14 grant Mr. Bennett's request for relief. Therefore, the court OVERRULES this objection.

15 Finally, Mr. Bennett objects that “[t]he Report and Recommendation failed to  
16 consider whether or not an evidentiary hearing would benefit a merits resolution nor [sic]  
17 Petitioner's right to contest factual disputes and expand the record.” (Obj. at 2 (citing  
18 *Townsend v. Sain*, 372 U.S. 293 (1963); *Cullen v. Pinholster*, 563 U.S. 170, 181, 182  
19 (2011)).) The decision to hold an evidentiary hearing is committed to the court's  
20 discretion. *Schrivo v. Landrigan*, 550 U.S. 465, 473 (2007). “[A] federal court must  
21 consider whether such a hearing could enable an applicant to prove the petition's factual  
22 allegations, which, if true, would entitle the applicant to federal habeas relief.” *Id.* at 474.

1 "It follows that if the record refutes the applicant's factual allegations or otherwise  
2 precludes habeas relief, a district court is not required to hold an evidentiary hearing." *Id.*  
3 Because Mr. Bennett has not identified any evidence that he could present at an  
4 evidentiary hearing that would call into question the conclusion that his petition must be  
5 dismissed as untimely (*see generally* Obj.), the court OVERRULES this final objection.  
6 Thus, having reviewed Magistrate Judge Peterson's report and recommendation de novo,  
7 and having overruled all of Mr. Bennett's objections, the court ADOPTS Magistrate  
8 Judge Peterson's report and recommendation in its entirety.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the court OVERRULES Mr. Bennett's objections (Dkt.  
11 # 9) and ADOPTS Magistrate Judge Peterson's report and recommendation (Dkt. # 8).  
12 The court ORDERS as follows:

13 1. Mr. Bennett's petition for a writ of habeas corpus (Dkt. # 5) and this action  
14 are DISMISSED with prejudice as untimely pursuant to 28 U.S.C. § 2244(d)(1);  
15 2. Mr. Bennett's motion for judicial notice (Dkt. # 6) is DENIED as moot;  
16 3. A certificate of appealability is DENIED for the reasons set forth in the  
17 report and recommendation (*see* R&R at 3); and

18 //

19 //

20 //

21 //

22 //

1       4. The Clerk is DIRECTED to send copies of this order to Mr. Bennett and to  
2 Magistrate Judge Peterson.

3       Dated this 29th day of May, 2024.



4  
5       JAMES L. ROBART  
6       United States District Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22